

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

Edward J. Gladney,

Plaintiff,

v.

JT Shartle, et al.,

Defendants.

No. CV 17-00427-TUC-DCB

**ORDER**

Plaintiff Edward J. Gladney, who is confined in the United States Penitentiary (USP)-Beaumont in Beaumont, Texas, has filed a pro se civil rights Complaint (Doc. 1) pursuant to *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971), an Application to Proceed In Forma Pauperis (Doc. 2), and a Motion to Transfer Venue (Doc. 4). The Court will dismiss the Complaint with leave to amend.

**I. Application to Proceed In Forma Pauperis and Filing Fee**

Plaintiff's Application to Proceed In Forma Pauperis will be granted. 28 U.S.C. § 1915(a). Plaintiff must pay the statutory filing fee of \$350.00. 28 U.S.C. § 1915(b)(1). The Court will assess an initial partial filing fee of \$49.80. The remainder of the fee will be collected monthly in payments of 20% of the previous month's income credited to Plaintiff's trust account each time the amount in the account exceeds \$10.00. 28 U.S.C. § 1915(b)(2). The Court will enter a separate Order requiring the appropriate government agency to collect and forward the fees according to the statutory formula.

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## II. Motion to Transfer Venue

On August 28, 2017, Plaintiff filed a “Motion to Transfer Venue and Jurisdiction to the United States District Court for the Eastern District of Texas.” Plaintiff states that while preparing this action, he was transferred from USP-Tucson to USP-Beaumont. Plaintiff asserts that “the Court no longer has jurisdiction over Plaintiff’s claims and allegations in his *Bivens* action. Thus, he seeks a transfer to the proper venue in the Eastern District of Texas after service of the named defendants.”

Section 1391(b), 28 U.S.C. provides that a civil action in which jurisdiction is not based on diversity may be brought only in:

(1) a judicial district where any defendant resides, if all defendants reside in the same State, (2) a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated, or (3) a judicial district in which any defendant may be found, if there is no district in which the action may otherwise be brought.

In this case, all Defendants reside in Arizona and the events giving rise to the claim occurred in Arizona. Accordingly, appropriate venue is not affected by Plaintiff’s transfer to another district and this Court retains jurisdiction over the action. The Court will deny the Motion to Transfer Venue.

## III. Statutory Screening of Prisoner Complaints

The Court is required to screen complaints brought by prisoners seeking relief against a governmental entity or an officer or an employee of a governmental entity. 28 U.S.C. § 1915A(a). The Court must dismiss a complaint or portion thereof if a plaintiff has raised claims that are legally frivolous or malicious, that fail to state a claim upon which relief may be granted, or that seek monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1)–(2).

A pleading must contain a “short and plain statement of the claim *showing* that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2) (emphasis added). While Rule 8 does not demand detailed factual allegations, “it demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678

(2009). “Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.” *Id.*

“[A] complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Id.* (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). A claim is plausible “when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* “Determining whether a complaint states a plausible claim for relief [is] . . . a context-specific task that requires the reviewing court to draw on its judicial experience and common sense.” *Id.* at 679. Thus, although a plaintiff’s specific factual allegations may be consistent with a constitutional claim, a court must assess whether there are other “more likely explanations” for a defendant’s conduct. *Id.* at 681.

But as the United States Court of Appeals for the Ninth Circuit has instructed, courts must “continue to construe *pro se* filings liberally.” *Hebbe v. Pliler*, 627 F.3d 338, 342 (9th Cir. 2010). A “complaint [filed by a *pro se* prisoner] ‘must be held to less stringent standards than formal pleadings drafted by lawyers.’” *Id.* (quoting *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (*per curiam*)).

If the Court determines that a pleading could be cured by the allegation of other facts, a *pro se* litigant is entitled to an opportunity to amend a complaint before dismissal of the action. *See Lopez v. Smith*, 203 F.3d 1122, 1127-29 (9th Cir. 2000) (*en banc*). Plaintiff’s Complaint will be dismissed for failure to state a claim, but because it may possibly be amended to state a claim, the Court will dismiss it with leave to amend.

#### **IV. Complaint**

Plaintiff names the following Defendants in his one-count Complaint: USP-Tucson Warden JT Shartle, Inmate Terell Powell, Correctional Officer B. Westling, and the Federal Bureau of Prisons.

Plaintiff states that on May 19, 2016, between 9:00 a.m. and 10:10 a.m., Defendant Powell sexually assaulted him. Plaintiff claims Defendant Westling

negligently “failed to monitor the Unit [for] an Inmate not housed there; Defendant Warden failed to adequately staff Unit with two Officers and/or train staff to monitor Unit and out-of-bounds inmate.” Plaintiff further claims Defendant Bureau of Prisons “was negligent and denied Claim under FTCA.” Plaintiff attaches to his Complaint a letter from the Office of Western Regional Counsel denying Plaintiff’s administrative claim under the Federal Tort Claims Act.

Plaintiff seeks monetary damages.

## **V. Failure to State a Claim**

It is unclear whether Plaintiff intends to sue under *Bivens* or the Federal Tort Claims Act. Accordingly, the Court will screen the Complaint for each type of claim.

### **A. *Bivens***

Whether a cause of action exists under *Bivens* for a claim that an inmate’s Eighth Amendment rights were violated when prison staff failed to protect him from an attack by another inmate is unclear. *See Ziglar v. Abbasi*, \_\_U.S.\_\_, 137 S. Ct. 1843 (June 19, 2017). However, even if the Court assumes the existence of such a cause of action, Plaintiff has not alleged sufficient facts to state an Eighth Amendment claim.

A prison official violates the Eighth Amendment in failing to protect one inmate from another only when two conditions are met. First, the alleged constitutional deprivation must be, objectively, “sufficiently serious;” the official’s act or omission must result in the denial of “the minimal civilized measure of life’s necessities.” *Farmer v. Brennan*, 511 U.S. 825, 834 (1994). Second, the prison official must have a “sufficiently culpable state of mind,” *i.e.*, he must act with deliberate indifference to inmate health or safety. *Id.* In defining “deliberate indifference” in this context, the Supreme Court has imposed a subjective test: “the official must *both* be aware of the facts from which the inference could be drawn that a substantial risk of serious harm exists, *and* he must also draw the inference.” *Id.* at 839 (emphasis supplied).

Plaintiff alleges Defendant Westling negligently failed to monitor the unit in which Plaintiff was housed and this failure resulted in the attack by the other inmate.

1 Mere negligent failure to protect an inmate from another inmate is not actionable under  
2 § 1983. *Davidson v. Cannon*, 474 U.S. 344 (1986). Plaintiff has not alleged facts  
3 showing Defendant Westling was aware of a substantial risk of serious harm to Plaintiff  
4 and failed to act. Plaintiff therefore fails to state a claim against Defendant Westling.

5 Plaintiff also fails to state a claim against Defendant Powell, the attacking inmate,  
6 because Powell is a private actor and not acting under color of law. *Briley v. California*,  
7 564 F.2d 849, 853 (9th Cir. 1977) (to state a claim under § 1983 or *Bivens*, Plaintiff must  
8 allege that the Defendant was acting under color of state or federal law at the time the  
9 acts complained of were committed, and that Defendant deprived Plaintiff of a right,  
10 privilege, or immunity secured by the Constitution or laws of the United States).

11 With respect to Defendant Shartle, Plaintiff claims Defendant Shartle failed to  
12 assign sufficient numbers of properly trained staff to Plaintiff's unit. To state a claim for  
13 failure to train, a plaintiff must allege facts to support that the alleged failure amounted to  
14 deliberate indifference. *Cannell v. Lightner*, 143 F.3d 1210, 1213 (9th Cir. 1998). A  
15 plaintiff must allege facts to support that not only was particular training inadequate, but  
16 also that such inadequacy was the result of "a 'deliberate' or 'conscious' choice" on the  
17 part of the defendant. *Id.* at 1213-14; *see Clement v. Gomez*, 298 F.3d 898, 905 (9th Cir.  
18 2002). Plaintiff's facts do not show Defendant Shartle acted with deliberate indifference  
19 and Plaintiff, therefore, fails to state a claim against Defendant Shartle.

20 Finally, sovereign immunity prevents *Bivens* actions against the United States, its  
21 agencies, or its employees in their official capacities. *Arnsberg v. United States*, 757  
22 F.2d 971, 980 (9th Cir. 1984); *Holloman v. Watt*, 708 F.2d 1399, 1401-02 (9th Cir.  
23 1983); *see also Gerritsen v. Consulado General De Mexico*, 989 F.2d 340, 343 (9th Cir.  
24 1993) (federal agencies are immune from suit and the district courts lack jurisdiction over  
25 them absent express statutory authorization). Accordingly, Defendant Federal Bureau of  
26 Prisons is immune from suit in a *Bivens* action.

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1           **B.      Federal Tort Claims Act**

2           Although the United States may not be sued under *Bivens*, the United States is the  
 3 only proper defendant in an action brought pursuant to the Federal Tort Claims Act, 28  
 4 U.S.C. §§ 1346 and 2671-2680. 28 U.S.C. §§ 1346(b), 2679(a); *Allen v. Veterans*  
 5 *Administration*, 749 F.2d 1386, 1388 (9th Cir. 1984) (individual agencies of the United  
 6 States may not be sued under the Federal Tort Claims Act). Plaintiff has not named the  
 7 United States as a Defendant and therefore fails to state a claim under the Federal Tort  
 8 Claims Act. If Plaintiff intends to bring his claims under the Federal Tort Claims Act, he  
 9 must name the United States as a Defendant.

10          **VI.     Leave to Amend**

11           For the foregoing reasons, Plaintiff's Complaint will be dismissed for failure to  
 12 state a claim upon which relief may be granted. Within 30 days, Plaintiff may submit a  
 13 first amended complaint to cure the deficiencies outlined above. The Clerk of Court will  
 14 mail Plaintiff a court-approved form to use for filing a first amended complaint. If  
 15 Plaintiff fails to use the court-approved form, the Court may strike the amended  
 16 complaint and dismiss this action without further notice to Plaintiff.

17           Plaintiff must clearly designate on the face of the document that it is the "First  
 18 Amended Complaint." The first amended complaint must be retyped or rewritten in its  
 19 entirety on the court-approved form and may not incorporate any part of the original  
 20 Complaint by reference. Plaintiff may include only one claim per count.

21           A first amended complaint supersedes the original Complaint. *Ferdik v. Bonzelet*,  
 22 963 F.2d 1258, 1262 (9th Cir. 1992); *Hal Roach Studios v. Richard Feiner & Co.*, 896  
 23 F.2d 1542, 1546 (9th Cir. 1990). After amendment, the Court will treat the original  
 24 Complaint as nonexistent. *Ferdik*, 963 F.2d at 1262. Any cause of action that was raised  
 25 in the original Complaint and that was voluntarily dismissed or was dismissed without  
 26 prejudice is waived if it is not alleged in a first amended complaint. *Lacey v. Maricopa*  
 27 *County*, 693 F.3d 896, 928 (9th Cir. 2012) (en banc).

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## **VII. Warnings**

### **A. Release**

If Plaintiff is released while this case remains pending, and the filing fee has not been paid in full, Plaintiff must, within 30 days of his release, either (1) notify the Court that he intends to pay the unpaid balance of his filing fee within 120 days of his release or (2) file a *non*-prisoner application to proceed in forma pauperis. Failure to comply may result in dismissal of this action.

### **B. Address Changes**

Plaintiff must file and serve a notice of a change of address in accordance with Rule 83.3(d) of the Local Rules of Civil Procedure. Plaintiff must not include a motion for other relief with a notice of change of address. Failure to comply may result in dismissal of this action.

### **C. Copies**

Plaintiff must submit an additional copy of every filing for use by the Court. *See* LRCiv 5.4. Failure to comply may result in the filing being stricken without further notice to Plaintiff.

### **D. Possible “Strike”**

Because the Complaint has been dismissed for failure to state a claim, if Plaintiff fails to file an amended complaint correcting the deficiencies identified in this Order, the dismissal may count as a “strike” under the “3-strikes” provision of 28 U.S.C. § 1915(g). Under the 3-strikes provision, a prisoner may not bring a civil action or appeal a civil judgment in forma pauperis under 28 U.S.C. § 1915 “if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.” 28 U.S.C. § 1915(g).

### **E. Possible Dismissal**

If Plaintiff fails to timely comply with every provision of this Order, including

1 these warnings, the Court may dismiss this action without further notice. *See Ferdik*, 963  
2 F.2d at 1260-61 (a district court may dismiss an action for failure to comply with any  
3 order of the Court).

4 **IT IS ORDERED:**

5 (1) Plaintiff's Application to Proceed In Forma Pauperis (Doc. 2) is **granted**.

6 (2) As required by the accompanying Order to the appropriate government  
7 agency, Plaintiff must pay the \$350.00 filing fee and is assessed an initial partial filing  
8 fee of \$49.80.

9 (3) Plaintiff's Motion to Transfer Venue (Doc. 4) is **denied**.

10 (4) The Complaint (Doc. 1) is **dismissed** for failure to state a claim. Plaintiff  
11 has **30 days** from the date this Order is filed to file a first amended complaint in  
12 compliance with this Order.

13 (5) If Plaintiff fails to file an amended complaint within 30 days, the Clerk of  
14 Court must, without further notice, enter a judgment of dismissal of this action with  
15 prejudice that states that the dismissal may count as a "strike" under 28 U.S.C. § 1915(g)  
16 and deny any pending unrelated motions as moot.

17 (6) The Clerk of Court must mail Plaintiff a court-approved form for filing a  
18 civil rights complaint by a prisoner.

19 Dated this 16th day of October, 2017.

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Honorable David C. Bury  
United States District Judge



**Instructions for a Prisoner Filing a Civil Rights Complaint  
in the United States District Court for the District of Arizona**

1. Who May Use This Form. The civil rights complaint form is designed to help incarcerated persons prepare a complaint seeking relief for a violation of their federal civil rights. These complaints typically concern, but are not limited to, conditions of confinement. **This form should not be used to challenge your conviction or sentence.** If you want to challenge a state conviction or sentence, you should file a petition under 28 U.S.C. § 2254 for a writ of habeas corpus by a person in state custody. If you want to challenge a federal conviction or sentence, you should file a motion under 28 U.S.C. § 2255 to vacate sentence in the federal court that entered the judgment.
2. The Form. **Local Rule of Civil Procedure (LRCiv) 3.4(a) provides that complaints by incarcerated persons must be filed on the court-approved form.** The form must be typed or neatly handwritten. The form must be completely filled in to the extent applicable. All questions must be answered clearly and concisely in the appropriate space on the form. If needed, you may attach additional pages, **but no more than fifteen additional pages**, of standard letter-sized paper. You must identify which part of the complaint is being continued and number all pages. If you do not fill out the form properly, you will be asked to submit additional or corrected information, which may delay the processing of your action. You do not need to cite law.
3. Your Signature. You must tell the truth and sign the form. If you make a false statement of a material fact, you may be prosecuted for perjury.
4. The Filing and Administrative Fees. The total fees for this action are \$400.00 (\$350.00 filing fee plus \$50.00 administrative fee). If you are unable to immediately pay the fees, you may request leave to proceed in forma pauperis. Please review the “Information for Prisoners Seeking Leave to Proceed with a (Non-Habeas) Civil Action in Federal Court In Forma Pauperis Pursuant to 28 U.S.C. § 1915” for additional instructions.
5. Original and Judge's Copy. You must send an **original plus one copy** of your complaint and of any other documents submitted to the Court. You must send one additional copy to the Court if you wish to have a file-stamped copy of the document returned to you. All copies must be identical to the original. Copies may be legibly handwritten. **This section does not apply to inmates housed at an Arizona Department of Corrections facility that participates in electronic filing.**
6. Where to File. You should file your complaint in the division **where you were confined when your rights were allegedly violated.** See LRCiv 5.1(a) and 77.1(a). If you were confined in Maricopa, Pinal, Yuma, La Paz, or Gila County, file in the Phoenix Division. If you were confined in Apache, Navajo, Coconino, Mohave, or Yavapai County, file in the Prescott Division. If you were confined in Pima, Cochise, Santa Cruz, Graham, or Greenlee County, file in the Tucson Division. **Mail the original and one copy of the complaint with the \$400 filing and administrative fees or the application to proceed in forma pauperis to:**

Phoenix & Prescott Divisions:  
U.S. District Court Clerk  
U.S. Courthouse, Suite 130  
401 West Washington Street, SPC 10  
Phoenix, Arizona 85003-2119

**OR**

Tucson Division:  
U.S. District Court Clerk  
U.S. Courthouse, Suite 1500  
405 West Congress Street  
Tucson, Arizona 85701-5010

7. Change of Address. You must immediately notify the Court and the defendants in writing of any change in your mailing address. **Failure to notify the Court of any change in your mailing address may result in the dismissal of your case.**

8. Certificate of Service. You must furnish the defendants with a copy of any document you submit to the Court (except the initial complaint and application to proceed in forma pauperis). Each original document (except the initial complaint and application to proceed in forma pauperis) must include a certificate of service on the last page of the document stating the date a copy of the document was mailed to the defendants and the address to which it was mailed. *See Fed. R. Civ. P. 5(a), (d).* Any document received by the Court that does not include a certificate of service may be stricken. **This section does not apply to inmates housed at an Arizona Department of Corrections facility that participates in electronic filing.**

A certificate of service should be in the following form:

I hereby certify that a copy of the foregoing document was mailed  
this \_\_\_\_\_ (month, day, year) to:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Attorney for Defendant(s)

\_\_\_\_\_  
(Signature)

9. Amended Complaint. If you need to change any of the information in the initial complaint, you must file an amended complaint. The amended complaint must be written on the court-approved civil rights complaint form. You may file one amended complaint without leave (permission) of Court within 21 days after serving it or within 21 days after any defendant has filed an answer, whichever is earlier. *See Fed. R. Civ. P. 15(a).* Thereafter, you must file a motion for leave to amend and lodge (submit) a proposed amended complaint. LRCiv 15.1. In addition, an amended complaint may not incorporate by reference any part of your prior complaint. LRCiv 15.1(a)(2). **Any allegations or defendants not included in the amended complaint are considered dismissed.** All amended complaints are subject to screening under the Prison Litigation Reform Act; screening your amendment will take additional processing time.

10. Exhibits. You should not submit exhibits with the complaint or amended complaint. Instead, the relevant information should be paraphrased. You should keep the exhibits to use to support or oppose a motion to dismiss, a motion for summary judgment, or at trial.

11. Letters and Motions. It is generally inappropriate to write a letter to any judge or the staff of any judge. The only appropriate way to communicate with the Court is by filing a written pleading or motion.

12. Completing the Civil Rights Complaint Form.

**HEADING:**

1. Your Name. Print your name, prison or inmate number, and institutional mailing address on the lines provided.
2. Defendants. If there are **four or fewer** defendants, print the name of each. If you name **more than four** defendants, print the name of the first defendant on the first line, write the words “and others” on the second line, and attach an additional page listing the names of **all** of the defendants. Insert the additional page after page 1 and number it “1-A” at the bottom.
3. Jury Demand. If you want a jury trial, you must write “JURY TRIAL DEMANDED” in the space below “CIVIL RIGHTS COMPLAINT BY A PRISONER.” Failure to do so may result in the loss of the right to a jury trial. A jury trial is not available if you are seeking only injunctive relief.

**Part A. JURISDICTION:**

1. Nature of Suit. Mark whether you are filing the complaint pursuant to 42 U.S.C. § 1983 for state, county, or city defendants; “*Bivens v. Six Unknown Federal Narcotics Agents*” for federal defendants; or “other.” If you mark “other,” identify the source of that authority.
2. Location. Identify the institution and city where the alleged violation of your rights occurred.
3. Defendants. Print all of the requested information about each of the defendants in the spaces provided. If you are naming more than four defendants, you must provide the necessary information about each additional defendant on separate pages labeled “2-A,” “2-B,” etc., at the bottom. Insert the additional page(s) immediately behind page 2.

**Part B. PREVIOUS LAWSUITS:**

You must identify any other lawsuit you have filed in either state or federal court while you were a prisoner. Print all of the requested information about each lawsuit in the spaces provided. If you have filed more than three lawsuits, you must provide the necessary information about each additional lawsuit on a separate page. Label the page(s) as “2-A,” “2-B,” etc., at the bottom of the page and insert the additional page(s) immediately behind page 2.

**Part C. CAUSE OF ACTION:**

You must identify what rights each defendant violated. The form provides space to allege three separate counts (**one violation per count**). If you are alleging more than three counts, you must provide the necessary information about each additional count on a separate page. Number the additional pages “5-A,” “5-B,” etc., and insert them immediately behind page 5. Remember that you are limited to a total of fifteen additional pages.

1. Counts. You must identify which civil right was violated. **You may allege the violation of only one civil right per count.**
2. Issue Involved. Check the box that most closely identifies the issue involved in your claim. **You may check only one box per count.** If you check the box marked “Other,” you must identify the specific issue involved.
3. Supporting Facts. After you have identified which civil right was violated, you must state the supporting facts. Be as specific as possible. You must state what each individual defendant did to violate your rights. If there is more than one defendant, you must identify which defendant did what act. You also should state the date(s) on which the act(s) occurred, if possible.
4. Injury. State precisely how you were injured by the alleged violation of your rights.
5. Administrative Remedies. You must exhaust any available administrative remedies before you file a civil rights complaint. *See* 42 U.S.C. § 1997e. Consequently, you should disclose whether you have exhausted the inmate grievance procedures or administrative appeals for each count in your complaint. If the grievance procedures were not available for any of your counts, fully explain why on the lines provided.

**Part D. REQUEST FOR RELIEF:**

Print the relief you are seeking in the space provided.

**SIGNATURE:**

You must sign your name and print the date you signed the complaint. Failure to sign the complaint will delay the processing of your action. Unless you are an attorney, you may not bring an action on behalf of anyone but yourself.

**FINAL NOTE**

You should follow these instructions carefully. Failure to do so may result in your complaint being stricken or dismissed. All questions must be answered concisely in the proper space on the form. If you need more space, you may attach no more than fifteen additional pages. But the form must be completely filled in to the extent applicable. If you attach additional pages, be sure to identify which section of the complaint is being continued and number the pages.

\_\_\_\_\_  
Name and Prisoner/Booking Number

\_\_\_\_\_  
Place of Confinement

\_\_\_\_\_  
Mailing Address

\_\_\_\_\_  
City, State, Zip Code

(Failure to notify the Court of your change of address may result in dismissal of this action.)

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

\_\_\_\_\_,  
(Full Name of Plaintiff)

Plaintiff,

v.

(1) \_\_\_\_\_,  
(Full Name of Defendant)

(2) \_\_\_\_\_,

(3) \_\_\_\_\_,

(4) \_\_\_\_\_,

Defendant(s).

☐ Check if there are additional Defendants and attach page 1-A listing them.

**CASE NO.** \_\_\_\_\_  
(To be supplied by the Clerk)

**CIVIL RIGHTS COMPLAINT  
BY A PRISONER**

- ☐ Original Complaint  
☐ First Amended Complaint  
☐ Second Amended Complaint

**A. JURISDICTION**

1. This Court has jurisdiction over this action pursuant to:

☐ 28 U.S.C. § 1343(a); 42 U.S.C. § 1983

☐ 28 U.S.C. § 1331; *Bivens v. Six Unknown Federal Narcotics Agents*, 403 U.S. 388 (1971).

☐ Other: \_\_\_\_\_.

2. Institution/city where violation occurred: \_\_\_\_\_.

## B. DEFENDANTS

1. Name of first Defendant: \_\_\_\_\_. The first Defendant is employed as: \_\_\_\_\_ at \_\_\_\_\_.  

(Position and Title)
(Institution)
2. Name of second Defendant: \_\_\_\_\_. The second Defendant is employed as: \_\_\_\_\_ at \_\_\_\_\_.  

(Position and Title)
(Institution)
3. Name of third Defendant: \_\_\_\_\_. The third Defendant is employed as: \_\_\_\_\_ at \_\_\_\_\_.  

(Position and Title)
(Institution)
4. Name of fourth Defendant: \_\_\_\_\_. The fourth Defendant is employed as: \_\_\_\_\_ at \_\_\_\_\_.  

(Position and Title)
(Institution)

If you name more than four Defendants, answer the questions listed above for each additional Defendant on a separate page.

## C. PREVIOUS LAWSUITS

1. Have you filed any other lawsuits while you were a prisoner? ☐ Yes ☐ No
2. If yes, how many lawsuits have you filed? \_\_\_\_\_. Describe the previous lawsuits:
  - a. First prior lawsuit:
    1. Parties: \_\_\_\_\_ v. \_\_\_\_\_
    2. Court and case number: \_\_\_\_\_
    3. Result: (Was the case dismissed? Was it appealed? Is it still pending?) \_\_\_\_\_
  - b. Second prior lawsuit:
    1. Parties: \_\_\_\_\_ v. \_\_\_\_\_
    2. Court and case number: \_\_\_\_\_
    3. Result: (Was the case dismissed? Was it appealed? Is it still pending?) \_\_\_\_\_
  - c. Third prior lawsuit:
    1. Parties: \_\_\_\_\_ v. \_\_\_\_\_
    2. Court and case number: \_\_\_\_\_
    3. Result: (Was the case dismissed? Was it appealed? Is it still pending?) \_\_\_\_\_

If you filed more than three lawsuits, answer the questions listed above for each additional lawsuit on a separate page.



2. **Count II.** Identify the issue involved. Check **only one**. State additional issues in separate counts.

3. **Supporting Facts.** State as briefly as possible the FACTS supporting Count II. Describe exactly what **each Defendant** did or did not do that violated your rights. State the facts clearly in your own words without citing legal authority or arguments.

[illegible]

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a. Are there any administrative remedies (grievance procedures or administrative appeals) available at your institution? ☐ Yes ☐ No

b. Did you submit a request for administrative relief on Count II? ☐ Yes ☐ No

c. Did you appeal your request for relief on Count II to the highest level? ☐ Yes ☐ No

d. If you did not submit or appeal a request for administrative relief at any level, briefly explain why you did not.



### COUNT III

1. State the constitutional or other federal civil right that was violated: \_\_\_\_\_.
  2. **Count III.** Identify the issue involved. Check **only one**. State additional issues in separate counts.

<input type="checkbox"/> Basic necessities	<input type="checkbox"/> Mail	<input type="checkbox"/> Access to the court	<input type="checkbox"/> Medical care
<input type="checkbox"/> Disciplinary proceedings	<input type="checkbox"/> Property	<input type="checkbox"/> Exercise of religion	<input type="checkbox"/> Retaliation
<input type="checkbox"/> Excessive force by an officer	<input type="checkbox"/> Threat to safety	<input type="checkbox"/> Other: _____.	
  3. **Supporting Facts.** State as briefly as possible the FACTS supporting Count III. Describe exactly what **each Defendant** did or did not do that violated your rights. State the facts clearly in your own words without citing legal authority or arguments.  
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  4. **Injury.** State how you were injured by the actions or inactions of the Defendant(s).  
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\_\_\_\_\_  
\_\_\_\_\_.
  5. **Administrative Remedies.**
    - a. Are there any administrative remedies (grievance procedures or administrative appeals) available at your institution? ☐ Yes    ☐ No
    - b. Did you submit a request for administrative relief on Count III? ☐ Yes    ☐ No
    - c. Did you appeal your request for relief on Count III to the highest level? ☐ Yes    ☐ No
    - d. If you did not submit or appeal a request for administrative relief at any level, briefly explain why you did not. \_\_\_\_\_.

**If you assert more than three Counts, answer the questions listed above for each additional Count on a separate page.**

**E. REQUEST FOR RELIEF**

State the relief you are seeking:

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I declare under penalty of perjury that the foregoing is true and correct.

Executed on \_\_\_\_\_  
DATE

\_\_\_\_\_  
SIGNATURE OF PLAINTIFF

\_\_\_\_\_  
(Name and title of paralegal, legal assistant, or  
other person who helped prepare this complaint)

\_\_\_\_\_  
(Signature of attorney, if any)

\_\_\_\_\_  
(Attorney's address & telephone number)

**ADDITIONAL PAGES**

All questions must be answered concisely in the proper space on the form. If you need more space, you may attach no more than fifteen additional pages. But the form must be completely filled in to the extent applicable. If you attach additional pages, be sure to identify which section of the complaint is being continued and number all pages.